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Eve 8-9230

Executive

OGC Has Reviewed

1 March 1950

Legal Staff

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Payment of Per Diem - [REDACTED]

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1. In brief restatement of the facts as we understand them: Mr. [REDACTED], who is not an American citizen, was recruited in [REDACTED] for service in [REDACTED]. As submitted to the Project Review Committee and ultimately approved by the Acting Director of CIA, per diem was provided for American citizens, but the Project was silent on per diem for foreign nationals. Since Subject was the only foreign national that received a per diem, there are obvious morale factors implicit in the situation. The problem, as presented, is whether collection action should be taken or waived, and whether further action is required from the Projects Review Committee and the Director.

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2. In the absence of a clear prohibition in the Project submitted to the Committee as ultimately approved by the Acting Director, we do not believe that the officer issuing the travel orders exceeded his authority. While it was probably not within the broad administrative intention to allow per diem for the alien nationals involved in the Project, his act was not ultra vires. Orders were issued under the delegation to the Chief, Fiscal Branch from the DCI, dated 1 January 1949 (see 8 D) in conformance with these Agency regulations in force at the time (see [REDACTED] dated 31 January 1949) and the Standardized Government Travel Regulations. The authorization of per diem was therefore permissible, and we do not believe that collection can legally be enforced against the employee, or that the officer issuing the travel orders is personally liable.

3. We believe it would be advisable to request the Project Review Committee to determine whether payment of per diem was in excess of the total allocation for the Project, and whether a restatement of the administrative intention regarding allowance of per diem should be made to the officer issuing travel orders.

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Attach 3

Memo dtd 7 Feb 1950 to Executive

Memo dtd 30 Jan 1950 to DCI

Cpy of ltr dtd 11 Jan 1950 to [REDACTED]

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thereunder. (23 Comp. Gen. 713, 22 March 1941.)

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5. It does not appear, in this case, that the employee actually entered upon a bona fide travel status at the time he entered on duty with the organization. The facts disclose that he was employed effective 1 November 1940. However, he had been in Washington, D.C. since mid-July 1940. The employee's explanation for his presence in Washington was that he was on his honeymoon and also exploring possibilities for future employment. He had been married on 26 June 1940 in Idaho Falls, Idaho. While this office is of the opinion that [redacted] residence at the time of appointment was Idaho Falls, such finding does not necessarily or automatically entitle him to per diem upon employment in Washington. The fact remains that he was physically present in Washington at the time of appointment and it is difficult to see how this office could determine that he had entered upon a bona fide travel status upon his appointment when he did not perform any travel. (22 Comp. Gen. 342, 13 October 1942.)

6. Also to be considered in connection with this claim is the question of availability of funds. Since the period covered is entirely in the fiscal year 1946, appropriations available for that fiscal year are now lapsed.

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7. In view of the above rulings and the facts presented to this office, we are unable to say that [redacted] claim is legal. Consequently, it is our opinion that this claim cannot, on a legal basis, be approved for payment.

[redacted]
Assistant General Counsel

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